



CALIFORNIA
STATE BOARD
OF EQUALIZATION

BOARD MEMBERS

CAROLE MIGDEN
First District
San Francisco

BILL LEONARD
Second District
Ontario

CLAUDE PARRISH
Third District
Long Beach

JOHN CHIANG
Fourth District
Los Angeles

Steve Westly
State Controller
Sacramento

EXECUTIVE DIRECTOR
RAMON J. HIRSIG

California Emergency Telephone Users Surcharge Regulations

*Issued Pursuant to
Part 20, Division 2
Revenue and Taxation Code*

June 2004

Publication 39 • LDA

FOREWORD

This publication contains regulations that apply to the California Emergency Telephone Users Surcharge Law. The regulations have been adopted by the State Board of Equalization and are designed to implement, interpret, or make specific provisions of the law. Board regulations are revised periodically.

If you have any questions regarding the information contained in this publication, please call the Excise Taxes and Fees Division at 800-400-7115.

We welcome your suggestions for improving this or any other of the Board's publications. Please send your suggestions to:

Excise Taxes and Fees Division
State Board of Equalization
450 N Street, MIC:56
PO Box 942879
Sacramento CA 94279-0056

Note: This publication contains the applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, the latter is controlling.

CONTENTS

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

CALIFORNIA CODE OF REGULATIONS

Title 18. Public Revenues
Division 2. Board of Equalization, Chapter 5.5

ARTICLE 1. IMPOSITON OF SURCHARGE

Definitions	2401	1
Prepaid Telephone Calling Cards	2403	2
Partial Payments	2405	2
Liability for Surcharge Billed Through Billing Agents	2406	2

ARTICLE 2. EXCLUSION AND EXEMPTIONS

Exemptions from Surcharge	2413	3
---------------------------------	------	---

ARTICLE 3. REGISTRATION, RETURNS AND REPORTS

Registration	2421	4
Returns and Payments	2422	4
Reports	2425	5

ARTICLE 4. RECORDS

Records	2431	5
Relief from Liability	2432	5

CHAPTER 9.9 SPECIAL TAXES ADMINISTRATION—MISCELLANEOUS

Records	4901	6
Relief from Liability	4902	11

WHERE TO GET HELP

Board Field Offices	13
To Order Board Publications	13
Written Tax Advice	13
Taxpayers' Rights Advocate Office	13
Tax Evasion Hotline	13

ARTICLE 1. IMPOSITION OF SURCHARGE

Regulation 2401. DEFINITIONS.

Reference: Sections 41007 and 41021, Revenue and Taxation Code.

(a) SERVICE SUPPLIER. "Service Supplier" means any person supplying intrastate telephone communication services to any service user in this state, provided however:

(1) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(2) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) INTRASTATE TELEPHONE COMMUNICATION SERVICES. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes telephonic quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication as well as a service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) BILLING AGENT. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) BILLING AGGREGATOR. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

(1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;

(2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and

(3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such the time and in such form as the Board requests.

(e) PREPAID TELEPHONE CALLING CARD. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

History: Adopted April 6, 1977, effective July 1, 1977.

Amended April 1, 1997, effective October 1, 1997. Added subsection (c).

Amended January 5, 2000, effective May 27, 2000. Added (d) Billing Aggregator.

Amended July 26, 2000, effective November 1, 2000. Revised definition of Service Supplier and added (e) which defined Prepaid Telephone Calling Card.

Regulation 2403. PREPAID TELEPHONE CALLING CARDS.

Reference: Sections 41011 and 41021, Revenue and Taxation Code.

(a) The surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card by the providing service supplier to the extent that those dollar amounts or minutes were deducted to pay for intrastate telephone communication services provided to the user of the prepaid telephone calling card. Dollar amounts or minutes deducted for interstate telephone communication services are exempt from the surcharge. Dollar amounts or minutes of telephone service which are forfeited because they have not been used prior to the expiration of the prepaid telephone calling card are not subject to the surcharge.

(b) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the providing service supplier may apply the surcharge to an estimate of the charges for intrastate services subject to the surcharge. The estimate of charges may be based on such call information as the providing service supplier reasonably believed demonstrates the approximate amount of intrastate telephone communication service charges subject to the surcharge.

(c) If a prepaid telephone calling card contains a statement that the price of the card includes applicable taxes and fees, the service supplier responsible for collecting and paying the surcharge on intrastate telephone communications services provided pursuant to the card may reduce the taxable measure of such services by taxes and fees which are not subject to the 911 surcharge. Taxes and fees which are not subject to the 911 surcharge include the federal excise tax and the 911 surcharge. Taxes and fees imposed on the service supplier by statute, such as those imposed by the California Public Utilities Commission, may not be deducted from the taxable measure.

History: Adopted July 26, 2000, effective November 1, 2000.

Regulation 2405. PARTIAL PAYMENTS.

Reference: Sections 41024 and 41128, Revenue and Taxation Code.

Partial payments by a service user to a service supplier for intrastate charges for service shall be applied proportionately to the charges for service and to surcharge, unless the service user specifically directs otherwise in writing.

History: Adopted April 6, 1977, effective July 1, 1977.

Regulation 2406. LIABILITY FOR SURCHARGE REMITTED BY BILLING AGGREGATOR OR BILLED THROUGH BILLING AGENTS

Reference: Sections 41021 and 41023, Revenue and Taxation Code.

(a) The surcharge is required to be remitted by the service supplier which provided the intrastate telephone communication services.

(b) Where a return is filed and surcharge remitted by a billing aggregator on behalf of one or more service suppliers, the service supplier will be deemed to have remitted the surcharge if all of the following conditions have been met:

- (1) The service supplier has registered with the Board in accordance with Regulation 2421.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(2) The service supplier has notified the Board in writing that the billing aggregator is authorized to act on its behalf to prepare and file returns and remit the surcharge to the Board, and such authorization is still in effect.

(3) The service supplier has provided to the Board and to the billing aggregator its written consent for the billing aggregator to disclose to the Board any and all records concerning the activities conducted on behalf of the service supplier related to the surcharge.

(4) The billing aggregator does either (A) or (B).

(A) files a separate return for each service supplier on whose behalf the return is filed which includes the name, address, account number and amount of surcharge remitted; or

(B) files a single return for more than one service supplier; provided that the billing aggregator, at such time and in such form as the board requests, shall identify the service suppliers on whose behalf it filed the return and provide documentation supporting the return.

(c) A service supplier acting as a billing agent for another service supplier, reseller or billing aggregator is not liable for remitting the surcharge on services provided by or billed on behalf of the other service supplier, reseller or billing aggregator even though those charges may be included, as a separate part of a billing, with charges for services it did provide to the service user. A billing agent providing only billing services is not a service supplier and is not required to remit the surcharge collected on behalf of a service supplier that provided the service.

History: Adopted April 1, 1997, effective October 1, 1997.

Amended January 5, 2000, effective May 27, 2000. Added (b) which clarified the remittance of the surcharge by a billing aggregator on behalf of one or more service suppliers.

ARTICLE 2. EXCLUSIONS AND EXEMPTIONS

Regulation 2413. EXEMPTIONS FROM SURCHARGE.

Reference: Sections 41019 and 41027, Revenue and Taxation Code.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California. These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.

(8) Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

(e) Charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

History: Adopted April 6, 1977, effective July 1, 1977.

Amended January 9, 1980, effective February 29, 1980. In (b) (5) added second and third sentences.

ARTICLE 3. REGISTRATION, RETURNS AND REPORTS

Regulation 2421. REGISTRATION.

Reference: Section 41040, Revenue and Taxation Code.

Every service supplier supplying intrastate telephone communication service to any service user in this state shall register with the Board upon a form prescribed by the Board and shall set forth the name under which it transacts or intends to transact business, the principal office address and the mailing address of the service supplier, and such other information as the Board may require. The registration form shall be signed by the owner, a general partner, or a responsible officer of the corporation, as the case may be.

History: Adopted April 6, 1977, effective July 1, 1977.

Regulation 2422 note: Regulation 2422 is being revised. Effective January 1, 1997, the reporting period for filing and paying the tax was changed from quarterly to monthly.

Regulation 2422. RETURNS AND PAYMENT.

Reference: Sections 41051, 41052, and 41053, Revenue and Taxation Code.

On or before the last day of the second month of each calendar quarter every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Board for the preceding calendar quarter. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

At the time of filing each surcharge return the service supplier shall provide the Board with a list containing the names and addresses of any service users who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user only if the cumulative uncollected amount for that user totals \$3.00 or more.

History: Adopted April 6, 1977, effective July 1, 1977.

Amended July 28, 1982, effective December 5, 1982. Added \$3.00 limit on reported uncollectibles, in second paragraph.

Amended May 6, 1986, effective July 17, 1986. In the first paragraph, amended due date for submitting the return and making payments.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

Regulation 2425. REPORTS.

Reference: Section 41128, Revenue and Taxation Code.

Every service supplier registered with the Board shall annually file a report with the Board in such form as the Board may prescribe setting forth its estimate of the amount of intrastate telephone communication revenues on which it will collect and remit to the Board the emergency telephone users surcharge from November 1 of the current year through October 31 of the following year. This report shall be filed no later than June 30 of each year commencing June 30, 1978.

In addition to any other reports of returns required, the Board may require additional, supplemental, or other reports from service suppliers and service users.

History: Adopted April 6, 1977, effective July 1, 1977.

ARTICLE 4. RECORDS

Regulation 2431. RECORDS.

Reference: Section 41056, Revenue and Taxation Code.

(a) GENERAL. A service supplier shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) SPECIFIC APPLICATIONS. In addition to the record keeping requirements set forth in subdivision (a), service suppliers shall comply with the following requirements.

Every service supplier liable for payment of the emergency telephone users surcharge which it collects from service users shall keep complete and accurate records showing:

- (1) Totals for intrastate telephone communication in this state billed to service users.
- (2) All exemptions allowed by law.
- (3) Amounts of Emergency Telephone Users Surcharge collected.

History: Adopted April 6, 1977, effective July 1, 1976.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. General recordkeeping requirements can be found at the cite referenced in subdivision (a). Subdivision (b) has been added to identify additional recordkeeping requirements for service suppliers.

Regulation 2432. RELIEF FROM LIABILITY.

Reference: Section 41098, Revenue and Taxation Code.

A person may be relieved from the liability for the payment of the Emergency Telephone Users Surcharge, including any penalties and interest added to the surcharge, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on written advice given by the board as described in California Code of Regulations, Title 18, Section 4902.

History: Adopted July 26, 2000, effective November 1, 2000.

Amended February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite. Common administrative provisions for special taxes programs have been consolidated in Chapter 9.9 Special Taxes Administration. Requirements for relief from liability can be found at the referenced cite.

CHAPTER 9.9 SPECIAL TAXES ADMINISTRATION—MISCELLANEOUS

Regulation 4901. RECORDS.

Reference: Sections 8301, 8302, 8303, 8304, 9253, 9254, 30453, 30454, 32551, 32453, 40172, 40173, 40174, 40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604, 60605, and 60606, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) “Applicable Tax Laws” means any of the following:

- (A) Aircraft Jet Fuel Tax, Revenue and Taxation Code Sections 7385-7398, 7486-8406;
- (B) Alcoholic Beverage Tax, Revenue and Taxation Code Sections 32001-32557;
- (C) Ballast Water Management Fee, Public Resources Code Sections 71200-71271; Revenue and Taxation Code Sections 44000-44008, 55001-55381;
- (D) California Tire Fee, Public Resources Code Sections 42860-42895; Revenue and Taxation Code Sections 55001-55381;
- (E) Childhood Lead Poisoning Prevention Fee, Health and Safety Code Section 105310; Revenue and Taxation Code Sections 43001-43651;
- (F) Cigarette and Tobacco Products Tax, Revenue and Taxation Code Sections 30001-30481;
- (G) Diesel Fuel Tax, Revenue and Taxation Code Sections 60001-60709;
- (H) Emergency Telephone Users Surcharge, Revenue and Taxation Code Sections 41001-41176;
- (I) Energy Resources Surcharge, Revenue and Taxation Code Sections 40001-40216;
- (J) Hazardous Substances Tax, Health and Safety Code Sections 25174.1, 25205.2, 25205.5, 25205.6, and 25205.7; Revenue and Taxation Code Sections 43001-43651;
- (K) Integrated Waste Management Fee, Public Resources Code Sections 40000-48008; Revenue and Taxation Code Sections 45001-45984;
- (L) Motor Vehicle Fuel Tax, Revenue and Taxation Code Sections 7301-8526;
- (M) Natural Gas Surcharge, Public Utilities Code Sections 890-900; Revenue and Taxation Code Sections 55001-55381;
- (N) Occupational Lead Poisoning Prevention Fee, Health and Safety Code Section 105190; Revenue and Taxation Code Sections 43001-43651;
- (O) Oil Spill Response, Prevention, and Administration Fees, Revenue and Taxation Code Sections 46001-46751;
- (P) Underground Storage Tank Maintenance Fee, Revenue and Taxation Code Sections 50101-50162;
- (Q) Use Fuel Tax, Revenue and Taxation Code Sections 8601-9355.

(2) “Database Management System” — a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(3) “Electronic data interchange” or “EDI technology” — the computer to computer exchange of business transactions in a standardized structured electronic format.

(4) “Hardcopy” — any document, record, report or other data maintained in a paper format.

(5) “Machine-sensible record” — a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(6) "Taxpayer" includes "fee payer" and means any person liable for the payment of a tax or a fee specified under any of the applicable tax laws.

(7) "Tax" includes "fee" and means any amount of tax or fee specified under any of the applicable tax laws.

(b) GENERAL.

(1) A taxpayer shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the applicable tax laws and all records necessary for the proper completion of the required tax return or report. Such records include but are not limited to:

(A) Books of account or other similar summary information ordinarily maintained by the taxpayer as required by law or practice or otherwise in the possession of the taxpayer or third party at the direction or request of the taxpayer.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 8301-8306, 9253, 9254, 30453, 30454, 32551, 32453, 40172-40175, 41056, 41073, 41129.30, 43502, 45852, 46602, 46603, 50153, 55302, 60604-60606, Revenue and Taxation Code.

(c) MACHINE-SENSIBLE RECORDS.

(1) General.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format which the board has the technological capability to use, such as Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., exempt), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) **ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS.** The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) **BUSINESS PROCESS INFORMATION.**

(A) Upon request of the board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing, and;
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (e.g., data set name); and
4. detailed charts of accounts and account descriptions.

(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The taxpayer and the board may agree on other means of providing access to the machine-sensible records.

(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging and may discard the original hardcopy documents, provided the conditions of subdivision (h) are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm, microfiche or other media used in electronic imaging systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION - TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the board, which may include, but is not limited to, any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" under the applicable tax law.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

History: Adopted February 5, 2003, effective May 28, 2003.

Regulation 4902. RELIEF FROM LIABILITY.

Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, Revenue and Taxation Code.

(a) GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census, (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

History: Adopted February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite.

EMERGENCY TELEPHONE USERS SURCHARGE REGULATIONS

BOARD FIELD OFFICES

CITY	AREA CODE	NUMBER	CITY	AREA CODE	NUMBER	CITY	AREA CODE	NUMBER
Bakersfield	661	395-2880	Redding	530	224-4729	Suisun City	707	428-2041
Culver City	310	342-1000	Riverside	909	680-6400	Van Nuys	818	904-2300
El Centro	760	352-3431	Sacramento	916	227-6700	Ventura	805	677-2700
Eureka	707	445-6500	Salinas	831	443-3003	West Covina	626	480-7200
Fresno	559	248-4219	San Diego	619	525-4526	Offices for Out-of-State Accounts		
Kearny Mesa	858	636-3191	San Francisco	415	356-6600	Chicago, IL	312	201-5300
Laguna Hills	949	461-5711	San Jose	408	277-1231	Houston, TX	281	531-3450
Long Beach	562	901-2483	San Marcos	760	510-5850	New York, NY	212	697-4680
Norwalk	562	466-1694	Santa Ana	714	558-4059	Sacramento, CA	916	227-6600
Oakland	510	622-4100	Santa Rosa	707	576-2100			
Rancho Mirage	760	346-8096	Stockton	209	948-7720			

TO ORDER BOARD PUBLICATIONS

To order copies of publications, forms, and regulations, you may:

Call or visit a Board office. If you plan to visit, please call ahead to make sure they have a copy in stock.

Call our toll-free number: 800-400-7115. Leave a recorded request 24 hours a day for a specific form, publication, or regulation, or, during working hours, talk to a representative.

TDD/TTY 800-735-2929

Use our fax-back service. Available 24 hours a day through the toll-free number. A recorded message will describe which types of documents are available and explain how you can have them sent to you by fax.

Use the Internet. Use your computer to download a publications order form or certain publications.

Enter: <http://www.boe.ca.gov>

WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if the Board determines that you reasonably relied on written advice from the Board regarding the transaction. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstance of the transaction.

You may also request written advice regarding a particular activity or transaction. Your request should be in writing and fully describe the facts and circumstances of the activity in question. Please mail your request to the following address: State Board of Equalization, Excise Taxes Division, P.O. Box 942879, Sacramento, CA 94279-0056

TAXPAYERS' RIGHTS ADVOCATE OFFICE

If you have been unable to resolve a disagreement with the Board, or if you would like to know more about your rights under the law, contact the Taxpayers' Rights Advocate for help:

Taxpayers' Rights Advocate, MIC:70	888-324-2798	toll-free phone
State Board of Equalization	916-324-2798	phone
PO Box 942879	916-323-3319	fax
Sacramento, CA 94279-0070		

TAX EVASION HOTLINE

Tax evasion hurts businesses that are paying their fair share. If you wish to report a case of suspected tax evasion, call our toll-free hotline at 888-334-3300, Monday through Friday, 8:00 a.m. – 5:00 p.m. (Pacific time), except State holidays.



*State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0001*